

Pt.IX S.171

(2) Where a planning authority proposes to amend a planning scheme under this section it shall comply with the procedure laid down in *section 169* and that section shall be construed accordingly.

(3) Notice of the revocation of a planning scheme under this section shall be given in at least one newspaper circulating in the area of the planning authority.

(4) The amendment or revocation of a planning scheme shall not prejudice the validity of any planning permission granted or anything done in accordance with the terms of the scheme before it was amended or revoked except in accordance with the terms of this Act.

(5) Without prejudice to the generality of *subsection (4)*, *sections 40* and *42* shall apply to any permission granted under this Part.

PART X

Environmental Impact Assessment

Requirement for
environmental
impact statement.

172.—(1) Where a planning application is made in respect of a development or class of development referred to in regulations under *section 176*, that application shall, in addition to meeting the requirements of the permission regulations, be accompanied by an environmental impact statement.

(2) In addition to the matters set out in *section 33(2)*, the Minister may make permission regulations in relation to the submission of planning applications which are to be accompanied by environmental impact statements.

(3) (a) At the request of an applicant or of a person intending to apply for permission, the Board may, having afforded the planning authority concerned an opportunity to furnish observations on the request, and where the Board is satisfied that exceptional circumstances so warrant, grant in respect of a proposed development an exemption from a requirement of or under regulations under this section to prepare an environmental impact statement, except that no exemption may be granted in respect of a proposed development if another Member State of the European Communities or other state party to the Transboundary Convention, having been informed about the proposed development and its likely effects on the environment in that State, has indicated that it intends to furnish views on those effects.

(b) The Board shall, in granting an exemption under *paragraph (a)*, consider whether—

(i) the effects, if any, of the proposed development on the environment should be assessed in some other manner, and

(ii) the information arising from the assessment should be made available to the members of the public,

and the Board may apply such requirements regarding these matters in relation to the application for permission as it considers necessary or appropriate.

(c) The Board shall, as soon as may be, notify the planning authority concerned of the Board's decision on any request made under *paragraph (a)*, and of any requirements applied under *paragraph (b)*. Pt.X S.172

(d) Notice of any exemption granted under *paragraph (a)*, of the reasons for granting the exemption, and of any requirements applied under *paragraph (b)* shall, as soon as may be—

(i) be published in *Iris Oifigiúil* and in at least one daily newspaper published in the State,

(ii) be given, together with a copy of the information, if any, made available to the members of the public in accordance with *paragraph (b)*, to the Commission of the European Communities.

(4) (a) A person who makes a request to the Board for an exemption under *subsection (3)* shall, as soon as may be, inform the planning authority concerned of the making of the request and the date on which it was made.

(b) Notwithstanding *subsection (8) of section 34*, the period for making a decision referred to in that subsection shall not, in a case in which a request is made to the Board under *subsection (3)* of this section, include the period beginning on the day of the making of the request and ending on the day of receipt by the planning authority concerned of notice of the Board's decision on the request.

(5) In addition to the matters provided for under *Part VI, Chapter III*, the Minister may prescribe additional requirements in relation to the submission of appeals to the Board which are to be accompanied by environmental impact statements.

173.—(1) In addition to the requirements of *section 34(3)*, where an application in respect of which an environmental impact statement was submitted to the planning authority in accordance with *section 172*, the planning authority, and the Board on appeal, shall have regard to the statement, any supplementary information furnished relating to the statement and any submissions or observations furnished concerning the effects on the environment of the proposed development.

Permission for development requiring environmental impact assessment.

(2) (a) If an applicant or a person intending to apply for permission so requests, the planning authority concerned shall give a written opinion on the information to be contained in an environmental impact statement, subject to any prescribed consultations to be carried out by the planning authority in relation to such an opinion, before that person submits the application for the grant of planning permission.

(b) The giving of a written opinion in accordance with *paragraph (a)* shall not prejudice the exercise by the planning authority concerned of its powers under this Act, or any regulations made thereunder, to require the person who made the request to submit further information regarding the application concerned.

Pt.X S.173

(c) The Minister may, by regulations, provide for additional, incidental, consequential or supplementary matters as regards procedure in respect of the provision of a written opinion under *paragraph (a)*.

(3) (a) Where a person is required by or under this Act to submit an environmental impact statement to the Board, he or she may, before submitting the statement, request the Board to provide him or her with its opinion as to the information that should be contained in such statement, and the Board shall on receipt of such a request provide such opinion in writing.

(b) The giving of a written opinion in accordance with *paragraph (a)* shall not prejudice the exercise by the Board of its powers pursuant to this Act or any regulations under this Act, to require the applicant to submit specified information in relation to any appeal to which the environmental impact statement relates.

(c) The Minister may make regulations in relation to the making of a request or providing an opinion to which this subsection relates.

Transboundary
environmental
impacts.

174.—(1) (a) The Minister may make regulations in respect of applications for development which require the submission of an environmental impact statement, where the planning authority, or the Board on appeal, is aware that the development is likely to have significant effects on the environment in another Member State of the European Communities or a state which is a party to the Transboundary Convention or where the other State concerned considers that the development would be likely to have such effects.

(b) Without prejudice to the generality of *paragraph (a)*, regulations under this subsection may make provision for the following:

(i) the notification of the Minister regarding the application;

(ii) the submission of information to the Minister regarding the application;

(iii) the notification of the other State involved and the provision of information to that State;

(iv) the making of observations and submissions regarding the application from the other State involved and the entering into consultations with that State;

(v) the extension of time limits for the making of decisions under this Act.

(2) In addition to the requirements of *sections 173(1)* and *34(3)*, the planning authority or the Board, as the case may be, shall have regard, where appropriate, to the views of any Member State of the

European Communities or other party to the Transboundary Convention in relation to the effects on the environment of the proposed development. Pt.X S.174

(3) Notwithstanding any other provisions of this Act, a planning authority or the Board, as the case may be, may, following the consideration of any submissions or observations received or any consultations entered into by a planning authority or the Board, impose conditions on a grant of permission in order to reduce or eliminate potential transboundary effects of any proposed development.

(4) Where a planning authority or a State authority requests, or in any other case where the Minister otherwise decides, the Minister may request another Member State of the European Communities or other party to the Transboundary Convention to forward information in respect of any development which is subject to the Council Directive or Transboundary Convention and which is likely to have significant environmental effects in Ireland.

(5) (a) The Minister or a State authority or planning authority having consulted with the Minister, may decide to forward submissions or observations to, or enter into discussions with, the other state involved in respect of the development referred to in *subsection (4)* regarding the potential transboundary effects of that development and the measures envisaged to reduce or eliminate those effects.

(b) The Minister may make regulations regarding the provision of public notification of any environmental impact statement or other information received by the Minister, State authority or planning authority under *subsection (4)*, and the making of submissions or observations regarding the information.

(6) The Minister may enter into an agreement with any other Member State of the European Communities or other party to the Transboundary Convention regarding the detailed procedures to be followed in respect of consultations regarding proposed developments which are likely to have significant transboundary effects.

175.—(1) Where development belonging to a class of development, identified for the purposes of *section 176*, is proposed to be carried out—

Environmental impact assessment of certain development carried out by or on behalf of local authorities.

(a) by a local authority that is a planning authority, whether in its capacity as a planning authority or in any other capacity, or

(b) by some other person on behalf of, or jointly or in partnership with, such a local authority, pursuant to a contract entered into by that local authority whether in its capacity as a planning authority or in any other capacity,

within the functional area of the local authority concerned (hereafter in this section referred to as “proposed development”), the local authority shall prepare, or cause to be prepared, an environmental impact statement in respect thereof.

(2) Proposed development in respect of which an environmental impact statement has been prepared in accordance with *subsection (1)* shall not be carried out unless the Board has approved it with or without modifications.

Pt.X S.175

(3) Where an environmental impact statement has been prepared pursuant to *subsection (1)*, the local authority shall apply to the Board for approval.

(4) Before a local authority makes an application for approval under *subsection (3)*, it shall—

(a) publish in one or more newspapers circulating in the area in which it is proposed to carry out the development a notice indicating the nature and location of the proposed development and—

(i) stating that—

(I) it proposes to seek the approval of the Board for the proposed development,

(II) an environmental impact statement has been prepared in respect of the proposed development,

(ii) specifying the times and places at which, and the period (not being less than 6 weeks) during which, a copy of the environmental impact statement may be inspected free of charge or purchased, and

(iii) inviting the making, during such period, of submissions and observations to the Board relating to—

(I) the implications of the proposed development for proper planning and sustainable development in the area concerned, and

(II) the likely effects on the environment of the proposed development,

if carried out,

and

(b) send a copy of the application and the environmental impact statement to the prescribed authorities together with a notice stating that submissions or observations may, during the period referred to in *paragraph (a)(ii)*, be made in writing to the Board in relation to—

(i) the likely effects on the environment of the proposed development, and

(ii) the implications of the proposed development for proper planning and sustainable development in the area concerned,

if carried out.

(5) (a) The Board may, where it considers it necessary to do so, require a local authority that has applied for approval for a proposed development to furnish to the Board such further information in relation to the effects on the environment of the proposed development as the Board may specify.

(b) The Board shall, where it considers that the further information received pursuant to *paragraph (a)* contains significant additional data relating to— Pt.X S.175

- (i) the likely effects on the environment of the proposed development, and
- (ii) the likely consequences for proper planning and sustainable development in the area in which it is proposed to situate the said development of such development,

require the local authority—

(I) to publish in one or more newspapers circulating in the area in which the proposed development would be situate a notice stating that further information in relation to the proposed development has been furnished to the Board, indicating the times at which, the period (which shall not be less than 3 weeks) during which and the place, or places, where a copy of the further information may be inspected free of charge or purchased and that submissions or observations in relation to the further information may be made to the Board before the expiration of the indicated period, and

(II) to send notice of the furnishing of the further information to the Board, and a copy of the information furnished to any prescribed authority to which notice was given pursuant to *subsection (4)(b)*, and to indicate to the authority that submissions or observations in relation to the further information may be made to the Board before the expiration of a period (which shall not be less than 3 weeks) beginning on the day on which the notice is sent to the prescribed authority by the local authority.

(6) Before making a decision in respect of a proposed development under this section, the Board shall consider—

(a) the environmental impact statement submitted pursuant to *subsection (1)*, any submissions or observations made in accordance with *subsection (4)* and any other information furnished in accordance with *subsection (5)* relating to—

- (i) the likely effects on the environment of the proposed development, and
- (ii) the likely consequences for proper planning and sustainable development in the area in which it is proposed to situate the said development of such development,

(b) the views of any other Member State of the European Communities or a state which is a party to the Transboundary

Convention to which a copy of the environmental impact statement was sent, and

- (c) the report and any recommendations of the person conducting a hearing referred to in *subsection (7)* where evidence is heard at such a hearing relating to—
 - (i) the likely effects on the environment of the proposed development, and
 - (ii) the likely consequences for proper planning and sustainable development in the area in which it is proposed to situate the said development of such development.

(7) The person conducting an oral hearing in relation to the compulsory purchase of land which relates wholly or partly to a proposed development under this section in respect of which a local authority has applied for approval shall be entitled to hear evidence relating to—

- (a) the likely effects on the environment of the proposed development, and
 - (b) the likely consequences for proper planning and sustainable development in the area in which it is proposed to situate the said development of such development.
- (8) (a) The Board may where it is satisfied that exceptional circumstances so warrant, grant an exemption in respect of proposed development from a requirement under *subsection (1)* to prepare an environmental impact statement except that no exemption may be granted in respect of proposed development where another Member State of the European Communities or a State party to the Transboundary Convention has indicated that it wishes to furnish views on the effects on the environment in that State of the proposed development.

- (b) The Board shall, in granting an exemption under *paragraph (a)*, consider whether—
 - (i) the effects, if any, of the proposed development on the environment should be assessed in some other manner, and
 - (ii) the information arising from such an assessment should be made available to the members of the public,

and it may apply such requirements regarding these matters in relation to the application for approval as it considers necessary or appropriate.

- (c) Notice of any exemption granted under *paragraph (a)* of the reasons for granting the exemption, and of any requirements applied under *paragraph (b)* shall, as soon as may be—
 - (i) be published in *Iris Oifigiúil* and in at least one daily newspaper published in the State, and

- (ii) be given, together with a copy of the information, if any, made available to the members of the public in accordance with *paragraph (b)*, to the Commission of the European Communities. Pt.X S.175

(9) The Board may—

- (a) approve,
- (b) approve, subject to conditions, or
- (c) refuse to approve,

a proposed development under this section.

(10) (a) Where an application under this section relates to proposed development which comprises or is for the purposes of an activity for which an integrated pollution control licence or a waste licence is required, the Board shall not, where it decides to approve the proposed development, subject that approval to conditions which are for the purposes of—

- (i) controlling emissions from the operation of the activity, including the prevention, limitation, elimination, abatement or reduction of those emissions, or
- (ii) controlling emissions related to or following the cessation of the operation of the activity.

(b) Where an application under this section relates to proposed development which comprises or is for the purposes of an activity for which an integrated pollution control licence or a waste licence is required, the Board may, in respect of any proposed development comprising or for the purposes of the activity, decide to refuse the proposed development, where the Board considers that the development, notwithstanding the licensing of the activity, is unacceptable on environmental grounds, having regard to the proper planning and sustainable development of the area in which the development is or will be situated.

(c) (i) Before making a decision in respect of proposed development comprising or for the purposes of an activity, the Board may request the Environmental Protection Agency to make observations within such period (which period shall not in any case be less than 3 weeks from the date of the request) as may be specified by the Board in relation to the proposed development.

(ii) When making its decision the Board shall have regard to the observations, if any, received from the Agency within the period specified under *subparagraph (i)*.

(d) The Board may, at any time after the expiration of the period specified by the Board under *paragraph (c)(i)* for making observations, make its decision on the application.

Pt.X S.175

(e) The making of observations by the Agency under this section shall not prejudice any other function of the Agency under this Act.

(11) (a) The Minister may make regulations to provide for such matters of procedure and administration as appear to the Minister to be necessary or expedient in respect of applications for approval under this section.

(b) Without prejudice to the generality of *paragraph (a)*, regulations under this subsection may make provision for—

(i) enabling a local authority to request the Board to give a written opinion on the information to be contained in an environmental impact statement,

(ii) matters of procedure relating to the making of observations by the Environmental Protection Agency under this section and matters connected therewith,

(iii) the notification of another Member State of the European Communities or other parties to the Transboundary Convention in relation to proposed development, receiving observations and submissions from the State or party and entering into consultations with them, and

(iv) requiring the Board to give information in respect of its decision regarding the proposed development for which approval is sought.

(12) In considering under *subsection (6)* information furnished relating to the likely consequences for proper planning and sustainable development of a proposed development in the area in which it is proposed to situate such development, the Board shall have regard to—

(a) the provisions of the development plan for the area,

(b) the provisions of any special amenity area order relating to the area,

(c) if the area or part of the area is a European site or an area prescribed for the purposes of *section 10(2)(c)*, that fact,

(d) where relevant, the policies of the Government, the Minister or any other Minister of the Government, and

(e) the provisions of this Act and regulations under this Act where relevant.

(13) A person who contravenes a condition imposed by the Board under this section shall be guilty of an offence.

(14) This section shall not apply to proposed road development within the meaning of the Roads Act, 1993, by or on behalf of a road authority.

176.—(1) The Minister may, in connection with the Council Directive or otherwise, make regulations—

Pt.X
Prescribed classes
of development
requiring
assessment.

- (a) identifying development which may have significant effects on the environment, and
- (b) specifying the manner in which the likelihood that such development would have significant effects on the environment is to be determined.

(2) Without prejudice to the generality of *subsection (1)*, regulations under that subsection may provide for all or any one or more of the following matters:

- (a) the establishment of thresholds or criteria for the purpose of determining which classes of development are likely to have significant effects on the environment;
- (b) the establishment of different such thresholds or criteria in respect of different classes of areas;
- (c) the determination on a case-by-case basis, in conjunction with the use of thresholds or criteria, of the developments which are likely to have significant effects on the environment;
- (d) where thresholds or criteria are not established, the determination on a case-by-case basis of the developments which are likely to have significant effects on the environment;
- (e) the identification of selection criteria in relation to—
 - (i) the establishment of thresholds or criteria for the purpose of determining which classes of development are likely to have significant effects on the environment, or
 - (ii) the determination on a case-by-case basis of the developments which are likely to have significant effects on the environment.

(3) Any reference in an enactment to development of a class specified under Article 24 of the European Communities (Environmental Impact Assessment) Regulations, 1989 (S.I. No. 349 of 1989), shall be deemed to be a reference to a class of development prescribed under this section.

177.—(1) The Minister may prescribe the information that is to be contained in an environmental impact statement.

Prescribed
information
regarding
environmental
impact statements.

(2) Any reference in an enactment to the information to be contained in an environmental impact statement specified under Article 25 of the European Communities (Environmental Impact Assessment) Regulations, 1989, shall be deemed to be a reference to information prescribed under this section.